

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(As Amended at ARRS, November 9, 2021)

501 KAR 6:250. Graduated sanctions for technical violations of probation and compliance incentives system.

RELATES TO: KRS 196.030, 439.250, 439.3105-439.3108, 439.551, 439.553, 446.010

STATUTORY AUTHORITY: KRS 196.035, 439.3106, 439.3107, 439.3108, 439.470, 439.551, 439.553

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 439.3106, 439.3107, 439.3108, 439.470, and 439.551 authorize the Justice and Public Safety Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the department or any of its divisions and to establish a system of graduated sanctions for probation violations. This administrative regulation establishes graduated sanctions for responding to violations of probation.

Section 1. Definitions. (1) "Conditions of supervision" or "conditions of probation" means general and specific directives given to an offender placed on probation by the sentencing judge or the Division of Probation and Parole.

(2) "Demonstrated pattern of failure to comply with conditions of supervision" means that the offender has a major violation of the same or similar condition of supervision more than three (3) times over the course of the offender's supervision.

(3) "Division" means the Kentucky Department of Corrections Division of Probation and Parole.

(4)~~[(3)]~~ "Graduated sanctions" is defined by [in] KRS 446.010~~(20)~~.

(5)~~[(4)]~~ "High risk behavior" means an action or [a lifestyle] activity that places a person at risk of violating a condition of supervision or committing a crime [suffering a particular harmful condition].

(6)~~[(5)]~~ "Offender" means a person placed under the supervision of the division by a court with jurisdiction over the sentence.

(7)~~[(6)]~~ "Officer" or "probation and parole officer" means a person employed by the division who supervises, counsels, and directs an offender on probation.

(8)~~[(7)]~~ "Releasing authority" means the court with jurisdiction over the sentence that granted probation.

(9)~~[(8)]~~ "Revocation" means an offender having his probation ended and being incarcerated as a result of a hearing for violations of conditions of supervision.

(10)~~[(9)]~~ "Risk and needs assessment" is defined by [in] KRS 446.010(38).

(11) "Probation and parole violation matrix" means the table in Section 6 of [within] this administrative regulation that addresses sanction decisions.

Section 2. Informal Response and Mandatory Return to Court.

(1) ~~[Application of Graduated Sanctions. If the sentencing court orders the offender to be subject to graduated sanctions as part of the conditions of his probation, then to the extent that this administration regulation is not in conflict with the orders of the court, graduated sanctions shall be applied as follows:~~

~~(1) The officer shall consider the:~~

~~(a) Offender's assessed risk and needs level;~~

~~(b) Offender's adjustment on supervision;~~

~~(c) Severity of the current violation;~~
~~(d) Seriousness of the offender's previous criminal record;~~
~~(e) Number and severity of any previous supervision violations; and~~
~~(f) Extent to which graduated sanctions were imposed for previous violations.~~
~~(2) The officer shall review the circumstances of the offender and the violations at issue to determine if the violation behavior is appropriately responded to with graduated sanctions.~~
~~(a)] Informal response.~~
~~(a) Unless otherwise ordered by the court[In lieu of graduated sanctions], the officer may resolve the following minor violations through an informal case management strategy:~~
~~1. Missing scheduled report day;~~
~~2. Traffic offense without arrest;~~
~~3. Failure to seek employment;~~
~~4. Failure to enroll or maintain school attendance; and~~
~~5. Failure to notify officer prior to change of address.~~
~~(b) The officer shall compile a violation report documenting the reason and the informal response.~~
~~(c) The officer shall meet with the offender to discuss and sign the violation response.~~
~~(2)[(b)] Violations which shall be returned to the releasing authority.~~
~~(a) Graduated sanctions shall not be used by the officer and violation documentation shall be submitted to the releasing authority for violation proceedings up to and including revocation for the following violations:~~
~~1. Absconding supervision;~~
~~2. New felony conviction;~~
~~3. New misdemeanor conviction of assault;~~
~~4. New misdemeanor conviction of violation of emergency protective, [or] domestic violence, or interpersonal protective order;~~
~~5. New misdemeanor conviction for sexual offense;~~
~~6. New misdemeanor conviction for driving under the influence;~~
~~7. Possession or use of a firearm;~~
~~8. Failure to complete sex offender treatment program; [or]~~
~~9. Demonstrated pattern of failure to comply with conditions of supervision; or~~
~~10. Violations of an assaultive nature.~~
~~(b) The officer shall provide the violation documentation to a supervisor and discuss the case prior to submitting the violation documentation to the releasing authority.~~

Section 3. Review for Graduated Sanctions and Use of the Matrix. If the violation is not handled by an informal response as established in Section 2 of this administrative regulation and the sentencing court orders the offender to be subject to graduated sanctions as part of the conditions of his probation, then to the extent that this administration regulation is not in conflict with the orders of the court, graduated sanctions shall be applied as follows:

- (1) The officer shall consider the:
(a) Offender's assessed risk and needs level;
(b) Offender's adjustment on supervision;
(c) Severity of the current violation;
(d) Seriousness of the offender's previous criminal record;
(e) Number and severity of any previous supervision violations;
(f) Extent to which graduated sanctions were imposed for previous violations; and
(g) Any other factors related to public safety.
(2)[

~~(3) If the officer determines that an informal response and graduated sanctions are not appropriate, then the officer shall report the violation to the releasing authority.~~

~~(4) If a determination is made by the officer to proceed with graduated sanctions]~~ The officer shall:

(a) Determine whether the violation is a major or minor violation in accordance with Sections 4[3] and 5[4] of this administrative regulation; and

(b) Review the probation and parole violation matrix in Section 6[5] of this administrative regulation to impose sanctions or determine other appropriate action as directed in this administrative regulation.

~~(3)[(5)]~~ The officer shall consider the following when reviewing the violation behavior with the matrix:~~[-]~~

(a) If there are multiple violations, the officer shall use the most serious violation for the review for sanctions.

(b) If the possible sanctions in a response range have been exhausted on previous violations, the officer may use sanctions in the next highest response range.

(c) If the offender has violated conditions of supervision imposed in more than one (1) case (i.e., multiple cases from a single jurisdiction, cases from multiple jurisdictions, or on supervision for probation and parole or other form of community supervision), the officer shall determine the criminal conviction in the case for which the graduated sanctions will be imposed. A graduated sanction shall not be imposed on more than one case at a time and cases shall not be sanctioned separately for individual violations arising from the same series of violations.

~~(4)[(6)]~~ In order to determine the range of sanctions that may be imposed, the officer shall:

(a) Determine the offender's risk and needs level based on the offender's most recent risk and needs assessment; and

(b) Use the probation and parole violation matrix in Section 6[5] of this administrative regulation to cross reference the violation behavior category as determined in subsection ~~(3)[(5)]~~ of this section with the offender's risk and needs level to determine the sanctions available in the indicated response range.

(5) If the officer recommends a graduated sanction or discretionary detention, the officer shall:

(a) Discuss with a supervisor an appropriate graduated sanction for the violation~~[-~~if necessary,] prior to completing the violation report;

(b) Complete and provide the violation report to the supervisor including information about compliance with the probation and parole matrix in Section **6** [(6)] of this administrative regulation;

(c) State the reasons for a recommendation of an alternative response outside of the responses outlined in the probation and parole matrix, if the officer makes an alternative response recommendation. The reasons may include:

1. The sanctions from the indicated response range or a lower response range are insufficient for the circumstances of the violation and recommends imposing sanctions from a higher response range;

2. The sanctions from the indicated response range or a lower response range are insufficient for the circumstances of the violation and recommends revocation;

3. Interventions not included in the matrix are appropriate for the circumstances of the violation; or

4. The officer determines that the offender has failed to comply with prior graduated sanctions imposed and further implementation of graduated sanctions would be futile;

(d) Obtain approval from a supervisor for the violation response prior to imposing the sanction; and

(e) Document the approval, denial, or resubmission of an alternative graduated sanction action in the offender management system. [

~~(7) If the officer determines that the indicated response range or a lower response range contains an appropriate sanction for the circumstances of the violation, then the officer shall impose the sanction.~~

~~(8) The officer shall seek approval from the supervisor, if the officer determines that:~~

~~(a) More than two sanctions from response range 3 or higher are appropriate for the circumstances of the violation;~~

~~(b) The sanctions from the indicated response range or a lower response range are insufficient for the circumstances of the violation and recommends imposing sanctions from a higher response range;~~

~~(c) The sanctions from the indicated response range or a lower response range are insufficient for the circumstances of the violation and recommends revocation; or~~

~~(d) Interventions not included in the matrix are appropriate for the circumstances of the violation.]~~

(6)[(9)] Upon receiving a recommendation for graduated sanctions, [which requires approval before being implemented][:]]

~~(a)] the [district] supervisor [or designee] shall review the recommendation and [may]:~~

(a)[1.] Approve the recommendation; or

(b)[2.] Reject the recommendation and refer the violation back to the officer for alternative sanctions or revocation.]; and

~~(b) The officer shall document the action in the offender management system.~~

~~(10) If the officer determines that the offender has failed to comply with graduated sanctions and further implementation of graduated sanctions would be futile, the officer shall seek approval from the district supervisor or designee to submit violation documentation to the releasing authority for violation proceedings.~~

~~(11) Upon receiving a recommendation to submit violation documentation to the releasing authority for violation proceedings:~~

~~(a) The district supervisor or designee shall review the recommendation and:~~

~~1. Approve the recommendation; or~~

~~2. Reject the recommendation and refer the violation back to the officer for alternative sanctions; and~~

~~(b) The officer shall document the action in the offender management system.]~~

Section 4.[Section 3.] Minor Violations. Minor violations shall include the following:

(1) Failure to report a citation or arrest;

(2) Failure to report;

(3) Being in an establishment where alcohol is sold as a primary commodity;

(4) Traffic offenses unless arrested;

(5) Failure to pay financial obligations as ordered by the releasing authority;

(6) Failure to seek employment;

(7) Failure to enroll or maintain school attendance;

(8) Falsifying a release report;

(9) Violation of other special conditions unless ordered by releasing authority;

(10) Association with convicted felon;

(11) Violation of travel restrictions;

(12) Visiting a correctional facility without prior approval;

(13) Issuance of an emergency protective order, ~~[or]~~ domestic violence order, or interpersonal protective order;

- (14) Violation of curfew;
- (15) First or second positive drug or alcohol test;
- (16) Failure to comply with re-entry programming;
- (17) Failure to complete community service; and
- (18) Other violations of similar magnitude.

Section 5.~~[Section 4.]~~ Major Violations. Major violations shall include the following:

- (1) Misdemeanor conviction that does not require submission to the releasing authority pursuant to Section 2(2)(a)~~[b]~~ of this administrative regulation;
- (2) Failure to complete~~[comply with]~~ treatment;
- (3) Failure to complete halfway house program;
- ~~(4)~~~~(3)~~ Multiple minor violations within ninety (90) days;
- ~~(5)~~~~(4)~~ Multiple positive drug or alcohol tests or high risk behavior;
- ~~(6)~~~~(5)~~ Refusal to submit to an alcohol or drug test;
- (7) Altering or attempting to alter the results of a drug screen;
- ~~(8)~~~~(6)~~ Harassing~~[Intimidating]~~ or threatening a probation and parole officer;
- ~~(9)~~~~(7)~~ Possession or use of a weapon other than a firearm by an offender;
- ~~(10)~~~~(8)~~ Failure to comply with sex offender registry;
- ~~(11)~~~~(9)~~ Over three (3) months behind on restitution;
- ~~(12)~~~~(10)~~ Violation of a special condition ordered by the releasing authority;
- ~~(13)~~~~(11)~~ Violation of travel restrictions to another state;
- ~~(14)~~~~(12)~~ Violation of curfew with electronic monitoring device;
- ~~(15)~~~~(13)~~ Change of residence without officer's permission;
- ~~(16)~~~~(14)~~ Failure to notify probation and parole officer about address change;
- ~~(17)~~~~(15)~~ Failure to participate in a required program or service; and
- ~~(18)~~~~(16)~~ Other violations of similar magnitude.

Section 6.~~[Section 5.]~~ Probation and Parole Violation Matrix. The following matrix shall be used to determine allowable graduated sanctions for probation violations:

PROBATION AND PAROLE VIOLATION MATRIX					
	OFFENDER RISK LEVEL				
VIOLATION	Very High	High	Moderate	Low	Admin
1st Minor	2	1	1	1	1
2nd Minor	3	2	2	2	1
3rd (or more) Minor	4	3	3	2	2
1st Major	4	3	3	2	2
2nd Major	4	3	3		
3rd (or more) Major	4	4	4		
Response Range 1	Response Range 2		Response Range 3		Response Range 4
	Any response or combination of responses in range 1 or:		Any response or combination of responses in ranges 1-2 or:		Any response or combination of responses in ranges 1-3 or:
Verbal or Written Warning	Curfew up to 60 days		Curfew up to 120 days		Curfew up to 180 days

<u>Evidence Based Programming</u> <u>Coaching by supervisor & officer</u> Increase[Increased] Reporting Increase Frequency of Drug Testing <u>Referral to programming approved by the Department</u> <u>Up to 3 days Discretionary Detention with Supervisor Approval</u> Increase Level of Supervision Loss of Travel or Other Privileges Curfew up to 30 days Referral to the Social Service Clinician for substance abuse assessment and treatment Referral to Community Service Agency for Counseling or Treatment Community Service up to 8 hours	Community Service 20-30 hours Electronic Monitoring Increased Treatment Up To Residential Up to 5 days Discretionary Detention [up to 10 days] with Supervisor Approval	Community Service 30-40 hours Halfway House <u>6-10 days Discretionary Detention with Supervisor Approval</u> Jail Time <u>in excess of 10 days</u> [up to 30 days] (requires hearing with releasing authority)	Community Service 40-50 hours [Jail Time up to 60 days (requires hearing with releasing authority)] <u>Additional jail time at the discretion of the releasing authority</u> Request Revocation
*Upon consideration of the totality of the circumstances and with supervisory approval, the officer may direct the offender into appropriate interventions not included in the violation matrix or seek to impose a high lever sanction, up to and including revocation. <u>Discretionary detention for probationers shall be implemented pursuant to this administrative regulation to the extent</u>			

that it is not in conflict with the orders of the court.

Section 7.~~[Section 6.]~~ Documentation and Notice of Graduated Sanctions. (1) Prior to imposing the graduated sanctions, the officer shall prepare a probation violation report with graduated sanctions. The report shall include:

- (a) A description of the violation behavior;
- (b) A description of the sanctions which will be imposed; and
- (c) Notice of the offender's right to:
 - 1. A violation hearing before the court;
 - 2. Representation by an attorney at the hearing; and
 - 3. Have an attorney appointed for him at state expense if he cannot afford one.

(2) The officer shall:

(a) Provide a copy of the probation graduated sanctions violation report to the offender prior to the imposition of sanctions;

(b) Ask the offender if he can read the probation graduated sanctions violation report. If the offender states that he cannot read, then the officer shall read the report to the offender; and

(c) Ask the offender if he can understand English. If the offender informs the officer that he cannot understand English, the officer shall provide the offender with a probation graduated sanctions violation report in the offender's language or a language interpreter, if available. If the report cannot be provided in the offender's language and a language interpreter is not available, then the officer shall report the violation behavior to the court for disposition in lieu of proceeding with the graduated sanctions~~[sanctioning]~~ process.

(3) If the offender indicates to the officer that he does not understand his rights as stated in the probation graduated sanctions violation report, the officer shall report the violation behavior to the court for disposition in lieu of proceeding with the graduated sanctions~~[sanctioning]~~ process.

(4) If the offender chooses to waive his right to a violation hearing and elects to participate in the graduated sanctions~~[sanctioning]~~ process, then:

(a) The offender shall note his choice and sign the probation graduated sanctions violation report;

(b) The officer shall sign the probation graduated sanctions violation report;

(c) The district supervisor or designee shall sign the probation graduated sanctions violation report;

(d) The officer shall provide the probation graduated sanctions violation report to the releasing authority; and

(e) The officer shall document the actions taken in the offender management system.

(5) If the offender contests the graduated sanction to be imposed for minor violations, the officer shall report the contest to the supervisor. The supervisor shall deny the offender's contest or grant an alternative sanction.

(6) If the offender chooses not to waive his right to a violation hearing, the officer shall report the violation to the releasing authority for proceedings.

Section 8.~~[Section 7.]~~ Discretionary Detention ~~[Up to Ten Days]~~.

(1) Discretionary Detention Up to Ten (10) Days.

(a) If the officer recommends discretionary detention as a graduated sanction, the officer shall review the offender's record to determine if the recommended days of detention will cause the offender to serve more than sixty~~[thirty]~~ days in discretionary detention during the calendar year as limited by KRS 439.3108.

(b)[(2)] The officer shall determine a period of detention, not to exceed ten days in compliance with the probation and parole matrix in Section 6 of this administrative regulation.

(c)[(3)] The officer shall seek approval from a[the district] supervisor for the detention. If the officer takes the offender into custody, the officer shall:

- 1.[(a)] Obtain approval from a[the District] supervisor within four (4) hours;
- 2.[(b)] If the detention is not approved, follow directives of a[the District] supervisor;
- 3.[(c)] Continue the detention if other legal process permits; or
- 4.[(d)] Release the offender from detention.

(d)[(4)] Upon receiving a recommendation for detention, [the]

1.[(a)] the [district] supervisor shall:

1.[a.] [4.] Approve the recommendation; or

2.[b.] [2.] Reject the recommendation and refer the violation back to the officer for alternative sanctions or revocation. [; and]

(e)[(b)] The officer shall document the action in the offender management system.

(2) Discretionary detention for more than ten (10) days.

(a) If the officer recommends discretionary detention as a graduated sanction in excess of ten (10) consecutive days:

1. Discuss the detention days in excess of ten (10) days with a supervisor;
2. Complete a violation report with reasons for the additional period of detention;
3. Submit the violation report to a supervisor for approval;
4. Submit the violation report to the releasing authority with the reason for the additional detention days, if approval is received from a supervisor; and
5. Document the actions in the offender management system.

(b) Upon receiving a recommendation for detention the supervisor shall:

1. Approve the recommendation; or
2. Reject the recommendation and refer the violation back to the officer for alternative sanctions or revocation.

(3)[(5)] The officer shall determine if the offender is employed and whether it is feasible for the offender to serve the approved detention at times that the offender is not scheduled to work.

(4)[(6)] The officer shall document the violation and provide notice to the offender and the releasing authority pursuant to the provisions of Section 7[6] of this administrative regulation.

Section 9. After consideration of the totality of the circumstances, if the officer determines that graduated sanctions are not appropriate for the violation and seeks to return the offender to the releasing authority for violation proceedings, the officer shall discuss the case with a supervisor.

(1) The supervisor and officer shall review the following factors:

- (a) The offender has demonstrated an inability to comply with supervision;
- (b) Graduated sanctions have been previously imposed or the serious nature of the violation merits return to the releasing authority;
- (c) The offender refuses graduated sanctions;
- (d) All resources available in the community have been exhausted; and
- (e) The offender poses a safety risk to himself or the community.

(2) The case review shall be documented in the offender management system by the supervisor, including why graduated sanctions were not appropriate and the factors used to make the recommendation to the releasing authority.

Section 10.~~[Section 8.]~~ Compliance Incentives. An officer may use proportionate incentives for compliance with conditions of supervision including:

- (1) Reduced reporting requirements;
- (2) Lower levels of supervision as indicated by the offender's risk and needs assessment;
- (3) Removal of supervision conditions, for example home detention or curfew;
- (4) Eligibility for early termination of probation;
- (5) Awarding certificates of achievement;
- (6) Deferring a monthly supervision fee payment;
- (7) Asking the supervised individual to be a mentor to others; or
- (8) Other similar incentives.

This administrative regulation has been through the process advised for consultation with the Supreme Court prior to its filing with the Legislative Research Commission as required by KRS 439.551, 13A.120(3), and 13A.220(6)(a).

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